

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 1086 OF 2005

Surendra Parmanand Savalani ..Appellant
V/s.

Sadashiv Powar and others ..Respondents

Mr. Amit Borkar for the Appellant
Ms. Deepa Sawant i/b C.G. Gavnekar for Respondent no.
1, 2A to 2C.

CORAM : ANOOP V. MOHTA, J.

DATED : 11th July, 2007

P.C.

. The appellant-plaintiff had filed the suit for specific performance based on an alleged agreement dated 3-8-1989.

2. Both the Courts after considering the material as well as evidence led by the parties come to a conclusion that the Plaintiff failed to prove, at all stages, that he was ready and willing to perform his part of obligation. The conclusion as arrived at by both Courts below cannot be said to be perverse as it is based on the appreciation of material available on record. There was even doubt raised about the

existence and conclusion of the said agreement between the parties.

3. The grant of specific performance based on such agreement is always a discretionary relief. Both the Courts after appreciating the material available on record refused to exercise the said discretion in favour of plaintiff.

4. The learned counsel appearing for the appellant-plaintiff has relied on **Motilal Jain Versus Ramdasi Devi and others reported in (2006)6 SCC 420** and thereby contended that the averments as to the readiness and willingness in plaint itself is sufficient to justify that the plaintiff was always and still ready and willing to fulfil his part of the obligations.

5. The facts in that case are distinct and distinguished. In the present case both the Courts come to conclusion that plaintiff failed to prove his readiness and willingness at all stages as observed by the Apex Court in **Jugara Singh v/s. Labh Singh reported in AIR 1995 Supreme Court 945**. The conclusion, therefore, cannot be arrived at in favour

of the plaintiff merely because the plaintiff has averred that he was ready and willing to perform his part of obligation. The requirement of material as well as evidence to support the said plea is always essential which in this case as observed by both the Courts is not available. Resultantly, second appeal is dismissed. No costs.

[ANOO V. MOHTA, J.]